

IN THE UNITED STATES DISTRICT COURT FOR

FILED

THE WESTERN DISTRICT OF OKLAHOMA

JAN 5 2006

GARRY DON DANIELS,)
vs.)
Plaintiff,)
PETE PETERSON et al.,)
Defendants.)

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY BS DEPUTY

No. CIV-05-1232-W

ORDER

On October 21, 2005, plaintiff Garry Don Daniels filed the instant lawsuit seeking relief under title 42, section 1983 of the United States Code. The matter was referred to United States Magistrate Judge Bana Roberts on October 26, 2005, for preliminary review.

Daniels also filed on October 21, 2005, a Motion for Leave to Proceed In Forma Pauperis and a supporting affidavit and documents. On October 26, 2005, Magistrate Judge Roberts found that Daniels was entitled to proceed without full prepayment of the filing fee and granted his motion to that extent. She advised Daniels however that he would be required to pay the filing fee in full, and she set forth a schedule by which partial payments were to be made. She further advised Daniels that this matter was subject to dismissal without prejudice to refiling if he failed to comply.

In response, Daniels sought a waiver of the initial partial filing fee of \$5.12. He contended that if the partial filing fee was not waived, he would "have no choice but to 'voluntarily dismiss' this action . . ." [Doc. 6].

On November 4, 2005, Magistrate Judge Roberts noted that records at the Oklahoma Department of Corrections indicated that Daniels had a mandatory savings

balance in the amount of \$15.00 at the time he sought leave to proceed in forma pauperis. Accordingly, Magistrate Judge Roberts sua sponte granted Daniels until November 24, 2005, to request disbursement from his mandatory savings account to pay the initial partial filing fee.

Daniels took no further action, and on December 7, 2005, Magistrate Judge Roberts issued a Report and Recommendation and recommended that this matter be dismissed without prejudice because Daniels had not paid the initial partial filing fee. Daniels was advised of his right to object, but no objection was filed within the allotted time.¹

Upon de novo review of the record, the Court concurs with Magistrate Judge Roberts' suggested disposition of this matter. Daniels has neither paid the initial partial filing fee, requested an extension of time within which to do so nor demonstrated good cause for his failure to act.

Accordingly, the Court

- (1) ADOPTS the Report and Recommendation filed on December 7, 2005; and
- (2) DISMISSES this matter without prejudice to refiling.

ENTERED this 5th day of January, 2006.



LEE R. WEST
UNITED STATES DISTRICT JUDGE

¹Magistrate Judge Roberts' Report and Recommendation was mailed to the address listed by Daniels in his complaint. That document was returned to the Clerk of the Court by the United States Postal Service with the following notation on the envelope: "Attempted-Not Known." It is the responsibility of pro se litigants to provide the Court with a mailing address, Rule 5.5(a), Rules of the United States District Court for the Western District of Oklahoma, and to file with the Clerk of the Court notice of any change of address. Id. "Papers sent by the Court will be deemed delivered if sent to the last known address given to the Court." Id.